

ILLINOIS POLLUTION CONTROL BOARD  
March 19, 1987

IN THE MATTER OF: )  
 )  
PRIOR CONDUCT CERTIFICATION ) R81-18  
FOR WASTE DISPOSAL SITE PERSONNEL: )  
35 ILL. ADM CODE 745. )

PROPOSED RULE                      FIRST NOTICE

PROPOSED OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This docket was originally opened by the Board on June 10, 1981, to partially implement what was then Section 22(b) of the Environmental Protection Act ("Act"). Section 22(b) was subsequently amended and renumbered by P.A. 81-1484 and P.A. 83-1362, such that it is now found, as amended, at Section 22.5 of the Act (Ill. Rev. Stat. 1985, ch. 111 $\frac{1}{2}$ , par. 1022.5). In its entirety, Section 22.5 reads:

By July 1, 1984, the Board shall adopt standards for the certification of personnel to operate refuse disposal facilities or sites. Such standards shall provide for, but shall not be limited to, an evaluation of the prospective operator's prior experience in waste management operations. The Board may provide for denial of certification if the prospective operator or any employee or officer of the prospective operator has a history of

1. repeated violations of federal, State or local laws, regulations, standards, or ordinances regarding the operation of refuse disposal facilities or sites;
2. conviction in this or another State of any crime which is a felony under the laws of this State or conviction of a felony in a federal court; or
3. proof of gross carelessness or incompetence in handling, storing, processing, transporting or disposing of any hazardous waste.

Since its inception progress in this rulemaking has been retarded by developments in those simultaneous proceedings which involve modernization of the Board's solid and special waste regulations, including R80-20, R82-21, R82-22, R84-3, R84-17, and R84-22. The principal difficulty has been the desire of the

Illinois Environmental Protection Agency ("Agency"), industry, and the Board to not set up limited-life definitions and procedures which would need to be dismantled due to developments in the other rulemakings. In essence, it has been necessary to determine the directions taken in the other rulemakings before the present matter could proceed to a logical and consistent conclusion. These uncertainties are, for the most part, now resolved, and the Board accordingly today submits for first notice a proposed rule pursuant to Section 22.5.

#### PROCEDURAL HISTORY

In light of the substantial history of activity within this docket and other pertinent dockets, the Board will briefly set the background for its action today by reviewing the principal elements of that history.

Subsequent to initiation of this docket, the Board conducted three public hearings and received six public comments. Based upon these, the Board on May 13, 1982, proposed a revised set of rules, which were published at 6 Ill. Reg. 6523, June 4, 1982.

Following the June 1982 publication, two additional merit hearings were held and eight additional public comments were received. Based upon these, the Board on June 14, 1984, again revised and proposed a set of rules for first notice publication, which appeared at 8 Ill. Reg. 9876, June 29, 1984.

In the interval between adoption of the June 1982 and June 1984 proposals the Department of Energy and Natural Resources filed a hearing copy of its study of the "Economic Impact of Proposed Regulation R81-18: Certification of Waste Disposal Site Owners and Operators", Doc. No. 83/04, January, 1983 (hereinafter "EcIS"). Two additional hearings, as combined merit and EcIS hearings, were held on July 16 and August 6, 1984. Two additional public comments were also received subsequent to adoption of the June 1984 proposal.

Given the still existing uncertainties of interactions between the proposed rule and other pending rules, principally those under consideration in R84-17 and R84-22, the Board has postponed further official action until this time.

In summary, the Board has conducted seven hearings and received 16 public comments in the instant matter. Additionally, it has twice previously gone to first notice with amended proposals.

OVERVIEW OF TODAY'S PROPOSAL

It is the Board's intent in this proceeding, as originally enunciated when the docket was opened (43 PCB 589), only to prescribe standards for what is essentially a certification that an applicant's prior criminal and administrative history of violations do not disqualify the applicant from operating a waste disposal site or unit. In short, these rules prescribe procedures for acting upon an applicant's negative qualities. These rules are not intended, nor have ever been intended, to establish standards for defining positive qualities such as technical education, training, and years of work experience; to the degree that certification of the latter type might be desirable, promulgation of appropriate rules will have to await a proceeding devoted to that end.

The proposal the Board offers today retains the same thrust as prior proposals in the R81-18 docket. That thrust is the establishment of procedures whereby the prior conduct of waste disposal site personnel can be evaluated, and provision for the denial of operating permits in circumstances where prior conduct certification has not been obtained, has been denied, or has been cancelled or revoked.

Nevertheless, today's proposal departs in many particulars from the most recent prior proposal, that of June 1984. Many of the changes stem from a change in emphasis from site-related certification to certification of individuals. This change is, in fact, not a precipitous change, but rather one which has steadily evolved over the course of the proceeding. Among the most obvious differences related to the change in emphasis are a change in the title of the Part (and corresponding change in the caption of the proceeding) and a reordering of the various Subparts of the proposed rule.

There are two major additions and one major deletion in today's proposal. The additions consist of a provision for automatic cancellation of certification in Section 745.124 and two added prohibitions in Section 745.201. The deletion consists of removing the prior distinction between certification for hazardous versus non-hazardous waste disposal sites from Section 745.122 and elsewhere. The reasons for these major changes are discussed in the following under the appropriate section heading.

Given both the degree of alteration in the proposed rules and the lengthy period of time that has elapsed since the record has last been open for public comment, the Board believes it advisable that a general discussion of each section be presented. Accordingly, the following material consists of an overview of each of the proposed sections and comment on the intent of that section. Additionally, comment is given on those portions of the proposed rules which have been amended or

modified relative to the rules proposed by the Board in its most recent prior action of June 14, 1984. History prior to June 1984 is also discussed where this history is important to an understanding of the current proposal.

#### DISCUSSION OF TODAY'S PROPOSAL

Subpart A:                   GENERAL PROVISIONS  
Section 745.101       Scope and Applicability

This section identifies in 745.101(a) that the Part establishes procedures for prior conduct certification of waste disposal site personnel. This subsection is new, and is reflective of the emphasis on establishment of general prior conduct certification focused on individuals.

Subsection 745.101(b) identifies that the chief operator of certain waste disposal sites, as identified in Subpart E, must be certified, and that failure to have a validly certified chief operator is grounds for enforcement action and/or for denial or revocation of operating permits, pursuant to Subpart E. The subsection is unaltered in content from that found at 745.101(b) of the June 1984 proposal.

Subsection 745.101(c) is new. It identifies that any person who does not currently hold prior conduct certification due to denial of certification or due to cancellation or revocation of certification is prohibited from owning or operating a waste disposal site, or serving as an employee, officer or director of the owner or operator of a waste disposal site. More detailed discussion of this addition is presented below under the Subpart E discussion.

In the June 1984 proposal this section contained several additional provisions relating to conditions under which prior conduct certification is mandatory. These are now found at Subpart D, and discussed herein under that heading.

Section 745.102       Definitions

Throughout this proceeding, the Agency and other participants have stressed the need for uniformity between the definitions in this Part and the remainder of Subtitle G. As noted above, this has impeded the Board's ability to move forward with this proceeding, in that definitions elsewhere within Subtitle G have been subject to alteration in other proceedings. These definitions elsewhere within Subtitle G have now either been finalized or exist in sufficiently certain form so that this impediment no longer exists.

Nevertheless, given the possibility of further flux in definitions, particularly in the on-going R84-17 proceeding, the Board believes it advisable, and most likely to provide durability to this Part, that the terms specifically defined in the Part are limited to those which are unique to or have special meaning within the Part. For definition of other terms, reliance is placed on the Act and the list of definitions found at 35 Ill. Adm. Code 807.104.

The definition of chief operator has been expanded from that proposed in the June 1984 version to identify the chief operator as a "natural person" (thereby precluding the possibility of having the chief operator being identified as some legal entity rather than as an individual), and to include within the definition such individual or individuals who, from time to time and in the regular course of business, assume the functions of chief operator during periods of vacation, accident, illness, or the like. Two practical consequences of this latter addition to the definition are that a given site or unit<sup>1</sup> may have more than one certified chief operator, and that an individual may need certification if he assumes chief operator duties in the absence of the normal chief operator.

In defining "chief operator", the Board has adopted a variant of the Agency's definition of "operator". The word "chief" has been added to make a distinction with other individuals who may be characterized as operators. In researching this area, the Board has noted that industry and the regulatory agencies of other states refer to a spectrum of personnel as "operators", in the same way that personnel working in sewage treatment plants are referred to as "operators", even if they may have overall supervisory responsibilities.

Subsection (c) specifies that, for the purposes of this Part, waste disposal site is defined as a site for which a waste disposal permit is required by 35 Ill. Adm. Code: Subtitle G. The practical consequence of this definition is to provide that the mandatory certification provisions and the prohibitions of the Part (see Subpart E) are applicable in all cases where a Subtitle G permit is also required. These are specified to include RCRA disposal permits, UIC permits, and general waste site permits.

In its June 1984 proposal the Board had specifically included incinerators within the definition of "waste disposal

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<sup>1</sup> The Board notes that use of the term "unit" herein is intended to be consistent with the definition the term at 807.104 as "any device, mechanism, equipment or area used for storage, treatment or disposal of waste".

site" as used in this Part. Based on comments received at hearing, incinerators, which are governed by 35 Ill. Adm. Code: Subtitle B, are today being deleted from consideration under Part 745 (see also discussion for section 745.181, herein).

Subpart B                    APPLICATION FOR CERTIFICATION  
Section 745.121            Persons Who May Apply

This section specifies that any natural person, as opposed to a corporate entity, governmental unit, etc., may apply for prior conduct certification pursuant to this Part. It is a new section not present in the June 1984 proposal. It is being added in response to concerns expressed at hearing that it would be desirable to allow persons, other than those for whom certification is mandatory, to also obtain certification. One such circumstance might be the desire of an individual to obtain prior conduct certification in anticipation of obtaining the status of chief operator or as a general qualification useful in obtaining employment in the waste disposal industry. This provision additionally allows owners and other named permittees to have certified staff in employment to substitute for the normal chief operator during times of illness, accidents, vacations, and the like.

Section 745.122            Application

This section specifies the information that must be included in an application. Items (a) and (b) serve to identify the applicant and to identify the waste disposal sites at which the applicant has had prior significant responsibility. Item (c) identifies the information which is to be used in making the determinations required in Section 22.5(1)-(3) of the Act; this information consists of all final administrative or judicial determinations against the applicant. Item (d) requires that descriptions of any administrative or judicial actions pending against the applicant also be included in the application. Item (e) mandates inclusion of an affidavit attesting to the truth and completeness of the facts asserted in the application.

In the June 1984 proposal this section, which was there found at 745.141, contained the additional requirement that the application specify whether the applicant intends to dispose of hazardous waste. This requirement is being deleted consistent with amendments elsewhere in the Part which change the emphasis of the certification procedure from site-related certification to certification of individuals. An additional reason for its deletion is that prior proposals envisioned circumstances where the Agency might grant certification for non-hazardous waste disposal while simultaneously denying it for hazardous waste disposal. This "two-level" certification not only presents serious problems of workability, but also implies that prior poor

conduct may be less relevant in some types of waste management operations than in others. The Board does not believe that this last premise has general merit.

#### Section 745.123 Duty to Supplement Pending Application

This section requires that an applicant supplement any pending application within 30 days of any change in circumstances which renders the original application for certification inaccurate or incomplete in any respect. This section was found at 745.143 of the June 1984 proposal.

#### Section 745.124 Duty to Provide Supplemental Information

Subsection 745.124(a) requires that the information presented in an original application be updated on an annual basis, or earlier if requested by the Agency. Such requests by the Agency are limited to three in any one-year period. The latter provision is an addition to the comparable section of the June 1984 proposal (there found at 745.143), and is intended to serve as a safeguard against harassment. The time period of the update has also been changed from semi-annual to annual based on comments at hearing that the shorter time period, particularly given the ability to the Agency to request updates as needed, was unduly burdensome.

Subsections 745.124(b) through (d) are new. Their intent is to rectify two perceived deficiencies in the prior proposals. One deficiency is that there was no provision for imposition of a penalty for failure to comply with the provisions of 745.124(a). Secondly, there was no mechanism for cancellation of certification, once granted, short of a formal revocation action brought before the Board. In the latter context, it is readily imagined, that individuals may no longer wish to be certified for reasons of change in job, retirement, relocation outside of Illinois, etc.; these circumstances should not require a formal revocation action. The Board believes that both deficiencies are addressed by the new subsections.

Subsection 745.124(b) specifies that the Agency shall notify any individual certified pursuant to this Part for failure to comply with the provisions of 745.124(a). This notice is to be given no less than 45 days after failure to comply with either the annual report or the supplemental report requested by the Agency. The intent is to allow the certified individual a minimum of 45 days to prepare and submit the information required under 745.124(a) before the notification may be made.

Subsection 745.124(c) specifies that continued failure to comply with 745.124(a) after receipt of the Agency's notice of 745.124(b) is grounds for certification to be cancelled. As presently proposed, cancellation is effective upon receipt from

the Agency of a notice specifying that the person has continued to fail to comply with the requirements of 745.124(a) and has also failed to respond to the notice of 745.124(b). This additional notice, which actually effectuates cancellation, is seemingly required by due process considerations. However, if it can be demonstrated that due process problems would not exist, the cancellation could be achieved less burdensomely by simply having it be effective at some time after the 745.124(b) notice has been received but not acknowledged. The Board specifically requests comments on this matter.

By providing for automatic cancellation, subsection 745.124(c) provides a penalty appropriate to failure to comply with 745.124(a). Equally important, the automatic cancellation provision provides the Agency with a mechanism for updating its records of certified individuals other than through a cumbersome revocation proceeding. The Agency might wish, for example, to include in the notification of 745.124(b) a statement to the effect that the person need not respond if he/she no longer desires to maintain prior conduct certification. Thus, failure to respond would provide for cancellation of the certification.

The Board is aware that the goal of having a mechanism for certification termination could be handled by other means. One such way might be specification that the certification be of a given term, for example five years, after which reapplication would be required for continuance of certified status. This alternative, in particular, would not address the problem of the absence of provision for penalty for failure to comply with 745.124(a). However, it might have other merits which would make it more appropriate as a termination procedure than the procedure proposed here. Comments on this issue are also desired.

The fourth subsection, 745.124(d), specifies that an individual whose certification has been cancelled pursuant to 745.124(c) may reapply for certification at any time by filing a new application.

#### Section 745.125. Application Form

This section identifies that the Agency shall have responsibility for prescribing the form in which the information required under this Subpart shall be submitted. In the June 1984 proposal (found there at 745.144) this section also contained a provision requiring the Agency to conform the application procedures to the Illinois Administrative Procedure Act. This provision has been deleted as outside the authority of the Board to order.

Section 745.126      Incomplete Applications

This section specifies that an application is not complete until all information required by this Part and related Agency procedures has been filed with the Agency. It further specifies that if the Agency fails to notify an applicant within 45 days that the application is incomplete, the application is deemed complete and deemed to have been filed on the date received by the Agency. Lastly, it specifies that an Agency determination that the application is incomplete equates to a denial of certification for purposes of review pursuant to Section 40 of the Act and to 35 Ill. Adm. Code 105.

There are no substantive alterations to this section relative to the June 1984 proposal (there found at 745.146) other than specification that failure of the Agency to give notice within 45 days after receipt of an application that such application is incomplete deems the application to have been filed on the date of receipt and to be complete as filed. This inclusion is intended to assure timely action on the part of the Agency.

Section 745.127      Registered or Certified Mail

This section specifies that applications are to be mailed by registered or certified mail, or to be receipted for by a person designated by the Agency. Its intent is to assure a record of all filings. It remains unaltered, other than renumbering from 745.147, relative to the June 1984 proposal.

Subpart C                      AGENCY ACTION  
Section 745.141      Standards for Denial

This critical section defines in 745.141(a) the grounds upon which the Agency may deny prior conduct certification. In 745.141(b) it also defines the factors the Agency must take into consideration in making a determination to grant or deny certification.

745.141(a) remains unchanged from the corresponding provisions of the June 1984 proposal (there found at 745.161), other than for slight rewording to more closely conform it similar language used in Section 22.5 of the Act, and for change of the connective between 745.141(a)(4) and (5) from "and" to "or". The latter change is made to make it clear that the Agency may deny certification based on any one of the five grounds, and that it is not necessary that the Agency find cause against the applicant on each of the five grounds.

Subsection 745.141(a) specifies five showings that must be demonstrated in the application. These are that the applicant

has not repeatedly been found to be in violation of laws, regulations, or ordinances governing the operation of waste disposal sites; has not been convicted of a felony; has not been determined to have shown gross carelessness or incompetence in the handling, storing, processing, transporting or disposing of any waste; has not practiced fraud or deceit in obtaining or attempting to obtain certification; and has not failed to timely supplement an application pursuant to Section 745.123.

745.141(b) specifies what is to be considered by the Agency in making its determination to either grant or deny certification. The factors are also those to be considered by the Board in an appeal of a certification denial and in a revocation action, pursuant to Section 745.162(b). Three items are included: the severity of the misconduct; how recently the misconduct took place; and, the degree of control exerted by the applicant over waste disposal operations cited for misconduct. The three items remain unchanged from the June 1984 proposal, although their order of presentation has been modified.

The June 1984 proposal contained two additional provisions in what is here 745.141(b). These were how directly the misconduct related to disposal operations of hazardous and/or non-hazardous waste, and whether the applicant intends to dispose of hazardous waste. Both of these provisions have been deleted consistent with elimination of "two-level" certification, as discussed previously (see Section 745.122 discussion).

Section 745.141(c) is new today. Its intent is to make it clear that the burden of demonstrating good prior conduct rests with the applicant.

#### Section 745.142 Final Action

This section specifies that if the Agency denies a certification application based on any of the grounds identified in 745.141, it must provide the applicant with a detailed written statement as to the reasons why certification was denied. It further specifies that all notices of final action shall be by registered or certified mail.

The word "written" has been added to this section as compared to the June 1984 draft (there found at 745.162) to clarify that the reasons for denial must be provided in written form.

#### Section 745.143 Time Limits

This section specifies that if the Agency fails to take final action on an application within 90 days of filing, the applicant may deem that certification is granted for one year beginning on the 91st day after the application was filed. The

word "beginning" has been inserted prior to "on the 91st day", as compared to the June 1984 draft (there found at 745.163). This change is being made to provide clarity to the date upon which the deemed certified one-year period is to commence.

The Board has some question as to whether this "default provision" is in fact a necessary element of the rule. Accordingly, the Board particularly solicits comment on this matter.

Section 745.144 Waiver of Time Limits

This section provides that an applicant for certification may waive the requirement of the time within which the Agency must take final action on an application. It remains unaltered from that previously found at 745.164 except for change of the word "shall" to "must".

Subpart D APPEAL, REVOCATION AND TRANSFERABILITY  
Section 745.161 Appeal of Certification Denial

This section provides that an applicant to whom certification has been denied by the Agency may appeal the Agency's action to the Board following the procedures of Section 40 of the Act and 35 Ill. Adm. Code 105. The portions of the Act and Board regulations cited are those pertaining to permit appeals, and it is thereby intended that certification appeals be governed by the same statutes, regulations, case law, and precedents which govern permit appeals. This section was found at 745.181 of the June 1984 proposal.

Section 745.162 Revocation

This section provides that any person may seek revocation of certification based on any of the grounds stated in 745.141(a) by filing a complaint with the Board pursuant to Title VIII of the Act and 35 Ill. Adm. Code 103. The term "person" is used here in the broad context, as defined in the Act. The section further provides that the Board will consider the factors listed in 745.141(b) in reaching its determination in a revocation proceeding. This section was found at 745.182 of the June 1984 proposal.

In the June 1984 proposal the title to this Subpart contained reference to "suspension" in addition to "revocation". Other references to "suspension or revocation" also occurred at various positions within the Part. All references to suspension have been deleted here and elsewhere within the Part. As currently proposed the only mechanisms by which certification may be involuntarily terminated once granted are via the cancellation provision of 745.124 and the revocation procedure of this section.

There has been some concern that a mechanism for suspension of certification at the discretion of the Agency may have merit. The Board is not proposing such a mechanism at this time, under the belief that the cancellation and revocation procedures, as proposed, constitute sufficient mechanism for involuntary termination of certification, and that suspension might present problems of a due process and legal authority nature. However, the Board would particularly welcome comment on this issue.

Section 745.163      Duration and Transferability

This section provides that all certifications granted other than pursuant to 745.143 shall remain valid unless revoked by Board action pursuant to 745.162 or cancelled pursuant to 745.124. It further provides that certification is not transferable. This section, with minor modification, appeared at 745.183 of the June 1984 proposal.

Subpart E                      PROHIBITIONS  
Section 745.180      Applicability of the Subpart

Section 745.180 identifies that the requirements of Subpart E do not apply to waste treatment and storage sites. This section was found at 745.101(c) of the June 1984 draft.

Section 745.181      Chief Operator Requirements

This section gathers provisions found in several sections of the previous June 1984 proposal. It sets out the conditions under which possession of prior conduct certification is mandatory. Prior conduction certification is required for that single individual who is chief operator of a waste disposal site. The term "chief operator is defined in 745.102. "Waste disposal site", which is also defined in 745.102 for the purposes of this Part, is any site for which a waste disposal permit is required by 35 Ill. Adm. Code: Subtitle G.

In its June 1984 version the Board had retained an earlier proposal for the inclusion of incinerators within the definition of waste disposal sites, and thereby the inclusion of incinerator operators under the mandatory prior conduct certification provision. This provision has been deleted based on the desire, at this time, to make prior conduct certification mandatory only for those portions of the waste disposal industry governed by Subtitle G.

In versions prior to the June 1984 version, the Board had considered including requirements that "owners", instead of or in addition to chief operators, have mandatory prior conduct certification. Industry objected to the inclusion of this provision because of its complexity as applied to the potentially multitudinous shareholders in major corporations. The EcIS also

identified this provision as imposing a great cost, and questioned the benefits. Additionally, the clear specification in Section 22.5 that "the Board shall adopt standards for the certification of personnel to operate refuse disposal facilities or sites" seemingly excludes a legislative intent of having certification apply to other than on-site operators. The Board has accordingly eliminated this requirement at this time.

Ownership responsibility is therefore restricted to assuring that a certified operator is in charge of day to day operations. This notwithstanding, there are many situations where the owner and chief operator are the same individual. In these cases, the owner would require certification by virtue of also being chief operator.

Similarly, certification is mandatory only for the "chief operator", as defined in 745.102. This provision is meant to exclude the need for certification of every individual employed at a waste disposal site or unit, and rather limits certification to just that individual or those individuals who bear actual responsibility for site operations.

Subsection 745.181(b) is an addition relative to the June 1984 proposal. It is being added on the recommendation of Waste Management Inc. (Public Comment 16) that the Part provide clarification of several matters regarding chief operator status. These are that the owner or other named permittee designate one or more individuals as chief operator(s); that one individual may be chief operator of multiple waste disposal units located at one site; that one individual may not be chief operator at more than one site; and, that a certified chief operator need not be present on-site during all hours of operation as long as the chief operator retains responsibility for site operations. The Board believes that each of these additions has potential merit, and that each may be consistent with the record as developed to date. However, given the absence of prior opportunity for other participants to comment on these additions, the Board notes that it particularly solicits comments on their inclusion.

#### Section 745.201 Prohibitions

This section sets out the four basic prohibitions which flow from the mandatory prior certification provision of Section 745.181. These are that no person shall operate a waste disposal site unless the chief operator has prior conduct certification (745.201(a)); that no site owner or other named permittee shall cause or allow operation of a waste disposal site unless the site chief operator has prior conduct certification (745.201(b)); that no person shall own or operate a waste disposal site if the person has had prior conduct certification denied, cancelled, or revoked and the prior conduct certification has not been

reestablished (745.201(c)); and that no person shall serve as an employee, officer or director of the owner or operator of waste disposal site if the person has had prior conduct certification denied, cancelled, or revoked and the prior conduct certification has not been reestablished (745.201(d)).

The proposed prohibitions of 745.201(a) and 745.201(b) are unaltered in concept from those found at 745.121(c) of the June 1984 proposal. They have been recast to emphasize that the burden of demonstrating that prior conduct certification exists lies with the certified individual or the owner or other named permittee(s).

The proposed prohibitions of 745.201(c) and 745.201(d) are new today. The Board believes that they may serve as necessary deterrents to individuals continuing to exercise control at waste disposal sites even though those individuals have failed to show good prior conduct as demonstrated by having been denied certification or having had certification cancelled or revoked. The Board believes that the spirit, as well as perhaps the letter, of Section 22.5 of the Act would be violated if such circumstances were to occur, and therefore wishes to provide the best deterrent possible. The Board therefore particularly solicits comment on these two additional prohibitions, including comment on both the merits of the prohibition and the Board's authority to promulgate these prohibitions.

In the June 1984 proposal the prohibitions section also contained a provision which identified certification as falling into two categories, one for non-hazardous waste disposal sites only and a second for both hazardous and non-hazardous waste disposal sites. The section also specified that the chief operator be certified to dispose of the type of waste, non-hazardous or hazardous, for which the site is permitted. These provisions are here deleted consistent with deletion of the "two-level" certification procedure throughout the Part (see discussion, Section 745.122).

#### Section 745.202 Agency Denial of Waste Disposal Permit

This section requires that the Agency deny any waste disposal permits required by Subtitle G to any owner or other named permit applicant, unless the applicant demonstrates that the applicant will not be in violation of the prohibitions of section 745.201.

In the June 1984 proposal (there found at 745.122) this section also provided that the Agency could deny issuance of any waste disposal permits required under Subtitle G to any chief operator who has not received certification or has had certification revoked. Since the chief operator would not hold permits, other than through dual capacity as owner or other named permittee, this provision has been deleted as unnecessary.

Section 745.203      Revocation of Waste Disposal Permit

This section provides that revocation of any Subtitle G permit may be sought on the grounds that the waste disposal site is in violation of Section 745.201, and that revocation shall be initiated by filing a complaint with the Board pursuant to Title VIII of the Act and 35 Ill. Adm. Code 103. This section was found at 745.203 of the June 1984 proposal.

Section 745.204      Defense

This section provides that a waste disposal site or unit has 90 days following termination of employment of its certified chief operator or revocation or cancellation of its chief operator's certification in which to employ a replacement certified chief operator. In the June 1984 proposal (there found at 745.124) this time period was 60 days. However, several comments at hearing indicated that this was an unduly tight time frame in which to identify (and perhaps hire) a new chief operator candidate, and for the candidate to actually obtain certification. The Board particularly solicits comments on the matter of whether the increase to 90 days, as today proposed, is sufficient to rectify this perceived problem.

Section 745.205      Effective Date

This section is new today. It specifies that the prohibitions of this Subpart shall become effective July 1, 1988. This date is presently presumed to provide sufficient time for the promulgation of this Part. It is also presently presumed to provide for no less than 180 days after promulgation and before the effective date during which the Agency may develop application and review procedures, applications may be submitted and reviewed, and final actions on the applications may be taken. Should this presumed schedule not be achievable, the date may have to be changed accordingly.

PUBLIC COMMENT

Given the lengthy record already compiled in this matter, the Board does not at this time foresee the need to conduct additional hearings. Nevertheless, given the magnitude of the amendments proposed today, the lengthy time since the record in this matter was last open, and a desire to bring this matter to final action, the Board serves notice of a particular desire for receiving public comment during the first notice period.

ORDER

The Clerk is directed to cause publication in the Illinois Register of the First Notice of the following proposed rules.

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE G: WASTE DISPOSAL  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER g: CERTIFICATIONS

PART 745  
PRIOR CONDUCT CERTIFICATION

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SUBPART E: PROHIBITIONS

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745.204 Defense  
745.205 Effective Date

AUTHORITY: Implementing Sections 22.4(b) and 22.5 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985 ch. 111 $\frac{1}{2}$ , pars. 1022.4(b), 1022.5 and 1027).

SOURCE: Adopted at 11 Ill. Reg. , effective

SUBPART A: GENERAL PROVISIONS

Section 745.101 Scope and Applicability

- a) This Part establishes procedures for prior conduct certification for personnel of waste disposal sites.
- b) This Part requires the chief operator of certain waste disposal sites, pursuant to Subpart E, to obtain prior conduct certification. Otherwise, permits for operation of the site may be denied or revoked, and the owners or other named permittees, as well as the chief operator, are subject to an enforcement action for continued operation without a certified operator, pursuant to Subpart E.
- c) This Part also prohibits any person who has had prior conduct certification denied, cancelled or revoked, unless the person has a current valid prior conduct certification, from owning or operating a waste disposal site or serving as an employee, officer or director of the owner or operator of a waste disposal site, pursuant to Subpart E.

Section 745.102 Definitions

- a) Unless otherwise stated or unless the context clearly indicates a different meaning, the definitions of terms used in this Part are the same as those found in the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 $\frac{1}{2}$ , pars. 1001 et seq.) and at 35 Ill. Adm. Code 807.104.
- b) Notwithstanding subsection (a), the following terms are defined for purposes of this Part:

"Act" means the Environmental Protection Act, Ill. Rev. Stat. 1985, ch. 111 $\frac{1}{2}$ , pars. 1001 et seq., as amended;

"Agency" means the Illinois Environmental Protection Agency;

"Board" means the Illinois Pollution Control Board;

"Chief Operator" means the one natural person in responsible charge of the day to day, overall operation of a waste disposal site on a 24-hour basis. "Chief Operator" also means any person who may from time to time and in the regular course of business be designated by a waste disposal site's chief operator to assume the functions of chief operator during periods of vacation, accident, illness or the like;

"Owner" means the person who owns a waste disposal site or part of a waste disposal site, or who owns the land on which the site is located.

- c) As used in this Subpart, "waste disposal site" means a site for which a waste disposal permit is required by 35 Ill. Adm. Code: Subtitle G, including but not necessarily limited to:
- 1) RCRA disposal permit required by 35 Ill. Adm. Code 703;
  - 2) UIC permit required by 35 Ill. Adm. Code 704; or
  - 3) Waste disposal permit required by 35 Ill. Adm. Code 807.

#### SUBPART B: APPLICATION FOR CERTIFICATION

##### Section 745.121 Persons Who May Apply

Any natural person may apply for prior conduct certification pursuant to this Part.

##### Section 745.122 Application

An application for prior conduct certification shall include:

- a) The name and address of the applicant;
- b)
  - 1) The name and address of each waste disposal site at any time owned or operated by the applicant, or at which the applicant served as chief operator;
  - 2) A description of the nature of the site and the type of waste disposed of there (e.g., hazardous waste, municipal waste); and
  - 3) A description of the length of and nature of involvement with each site.

- c) A copy of any administrative or judicial determination, made after opportunity for an adversarial proceeding, that the applicant has:
  - 1) Violated federal, state or local laws, regulations or ordinances governing the operation of any waste disposal site;
  - 2) Been convicted in Illinois or another state of any crime which is a felony under Illinois law, or been convicted of a felony in a federal court;
  - 3) Shown gross carelessness or incompetence in the handling, storing, processing, transporting or disposing of any hazardous waste in any state.
- d) A description, including the name of the agency or court, title, docket number and status of administrative or judicial proceeding, which is still pending, which:
  - 1) Could result in a determination against the application of the type described in subsection (c); or
  - 2) Could result in a reversal of any administrative or judicial determination provided by the applicant in response to subsection (c).
- e) An affidavit attesting to the truth and completeness of the facts asserted in the application.

Section 745.123          Duty to Supplement Pending Application

The applicant shall supplement any pending application for prior conduct certification within 30 days after any change of circumstances which renders in any respect the original application for prior conduct certification inaccurate or incomplete.

Section 745.124          Duty to Provide Supplemental Information

- a) Any person who holds prior conduct certification shall provide on an annual basis a supplemental information report to the Agency which identifies change in any of the information required by Section 745.122. A person who holds prior conduct certification shall additionally, upon Agency request, provide a supplemental information report which identifies change in any of the information required by Section 745.122 prior to the first anniversary of the submission of the previous report, so long as the person has not been required to submit more than three such reports during the previous one year period.

- b) The Agency shall provide written notice via registered or certified mail, return receipt requested, to any individual certified pursuant to this Part who has failed to comply with the provisions of subsection (a). Such notice shall be mailed no less than 45 days after the due date of the annual report, or no less than 45 days after the written request for supplemental information has been mailed.
- c) If a person certified pursuant to this Part fails to comply with the provisions of subsection (a) within 45 days after receipt of the notice of subsection (b), the Agency shall notify the person by registered or certified mail, return receipt requested, that prior conduct certification is cancelled effective upon receipt of the notice.
- d) Any person whose prior conduct certification has been cancelled pursuant to subsection (c) may reapply for certification at any time upon filing of an application pursuant to this Part.

Section 745.125            Application Form

The Agency shall prescribe the form in which all information required under this Subpart shall be submitted and may adopt such procedures as are necessary for carrying out its duties under this Part.

Section 745.126            Incomplete Applications

An application for prior conduct certification shall not be deemed filed until the Agency has received, at the designated address, all information and documents, in the form and with the content required by this Part and related Agency procedures. If the Agency fails to notify the applicant within 45 days after the receipt of an application that the application is incomplete, and of the reasons the application is considered to be incomplete, the application shall be deemed complete and deemed filed on the date received by the Agency. An applicant may deem the Agency's notification that the application is incomplete as a denial of prior conduct certification for purposes of review pursuant to the procedures of Section 40 of the Act and 35 Ill. Adm. Code 105.

Section 745.127            Registered or Certified Mail

All prior conduct certification applications shall be mailed or delivered to the appropriate address designated by the Agency, and, if mailed, shall be sent by registered or certified mail, return receipt requested. Applications which are hand-delivered shall be delivered to and receipted for by a person designated by the Agency.

SUBPART C: AGENCY ACTION

Section 745.141 Standards for Denial

- a) The Agency may deny prior conduct certification to any person who has:
  - 1) Been repeatedly found, after opportunity for an adversarial proceeding before any judicial or administrative body, to be in violation of any federal, state or local laws, regulations or ordinances governing the operation of waste disposal sites in any state;
  - 2) Been convicted in any state of a crime which would be a felony under Illinois law, or been convicted of a felony in federal court;
  - 3) Been judicially or administratively determined, after opportunity for an adversarial proceeding, to have shown gross carelessness or incompetence in the handling, storing, processing, transporting or disposing of any waste in any state;
  - 4) Practiced any fraud or deceit in obtaining or attempting to obtain prior conduct certification; or
  - 5) Failed to timely file a supplemental application pursuant to Section 745.123.
- b) In making a determination to grant or deny prior conduct certification, the Agency shall consider:
  - 1) The severity of the misconduct;
  - 2) How recently the misconduct took place;
  - 3) The degree of control exerted over waste disposal operations at a site by the applicant at the time misconduct described in subsection (a)(3) was committed.
- c) A person requesting certification has the burden of demonstrating that the person is entitled to the certification.

Section 745.142 Final Action

- a) If the Agency denies any prior conduct certification under Section 745.141, it shall transmit to the

applicant, within the time limits specified in this Part, a specific, detailed written statement as to the reasons why the prior conduct certification application was denied.

- b) The Agency shall send all notices of final action by registered or certified mail, return receipt requested. Final action shall take place on the date that such notice is mailed.

Section 745.143 Time Limits

If the Agency fails to take final action on the application for prior conduct certification within 90 days after its filing, the applicant may deem the prior conduct certification granted for one year beginning on the 91st day after the application was filed.

Section 745.144 Waiver of Time Limits

Any applicant for prior conduct certification may waive the requirement of the time within which the Agency must take final action on the application.

SUBPART D: APPEAL, REVOCATION AND TRANSFERABILITY

Section 745.161 Appeal of Certification Denial

If the Agency denies prior conduct certification under this Part, the applicant may appeal that action to the Board pursuant to Section 40 of the Act and 35 Ill. Adm. Code 105.

Section 745.162 Revocation

- a) Any person may file a complaint with the Board, pursuant to Title VIII of the Act and 35 Ill. Adm. Code 103, seeking revocation of a prior conduct certification which has been granted by the Agency, or which was issued by reason of Agency failure to comply with the time limits of Section 745.143. Such action may be based upon grounds stated in Section 745.141(a).
- b) In making its determination in such action, the Board will consider the factors listed in Section 745.141(b).

Section 745.163 Duration and Transferability

- a) Except as otherwise provided in Section 745.124 or Section 745.143, a prior conduct certification made pursuant to this Part remains valid until revoked pursuant to Section 745.162.
- b) A prior conduct certification is not transferable.

SUBPART E: PROHIBITIONS

Section 745.180 Applicability of the Subpart

This Subpart does not apply to sites used solely for waste treatment or waste storage.

Section 745.181 Chief Operator Requirements

- a) The individual who is chief operator of a waste disposal site, as defined pursuant to Section 745.102(c), shall have prior conduct certification.
- b) The owner or other named permittee shall designate one or more chief operators for each waste disposal site.
  - 1) One certified chief operator may serve in that capacity for multiple waste disposal units located at one waste disposal site.
  - 2) One certified chief operator shall not serve in that capacity for units located at two or more waste disposal sites.
  - 3) A certified waste operator need not be present during all hours a site is operating, provided that the chief operator retains responsibility for site operations during the period of absence, and can be contacted by waste disposal site personnel during the absence.

Section 745.201 Prohibitions

- a) No person shall operate a waste disposal site, unless the site chief operator has prior conduct certification.
- b) No site owner or other named permittee shall cause or allow operation of a waste disposal site, unless the site chief operator has prior conduct certification.
- c) No person shall own or operate a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.
- d) No person shall serve as an employee, officer or director of the owner or operator of a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.

Section 745.202 Agency Denial of Waste Disposal Permit

The Agency shall deny any waste disposal permit to any owner or other named permit applicant, unless the applicant demonstrates that the applicant will not violate Section 745.201.

Section 745.203 Revocation of Waste Disposal Permit

Any person may seek revocation of any waste disposal permit on the grounds that the waste disposal site is in violation of Section 745.201. Such action shall be initiated by filing a complaint with the Board pursuant to Title VIII of the Act and 35 Ill. Adm. Code 103.

Section 745.204 Defense

It shall be a complete defense to an action brought pursuant to Section 745.203 that a replacement certified chief operator has been employed within 90 days after the date of termination of employment of a certified chief operator, or cancellation or revocation of the chief operator's prior conduct certification.

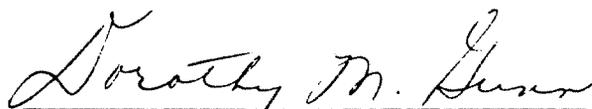
Section 745.205 Effective Date

The prohibitions of this Subpart shall become effective July 1, 1988.

IT IS SO ORDERED.

Jacob D. Dumelle concurred

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 19<sup>th</sup> day of March, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board